

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)
)
v.) CRIM NO. 2:05cr137-F
)
GEORGE DAVID SALUM III)

GOVERNMENT'S UNOPPOSED MOTION FOR CONTINUANCE
OF INITIAL PRETRIAL CONFERENCE

COMES NOW the United States of America, by and through its attorneys, Gregory R. Miler, United States Attorney for the Northern District of Florida, and the undersigned Assistant United States Attorney, and files motion to continue the Pretrial Conference currently scheduled for Thursday, July 14, 2005 at 11:00 a.m.

Statement of Facts

1.

At arraignment on June 3, 2005, the defendant waived his right to a speedy trial (Doc. No. 11).

2.

By Order on Arraignment dated June 3, 2005, this Court set an Initial Pretrial Conference for 11:00 a.m. on Thursday, July 14, 2005 (Doc. 18). This Court further ordered that the parties confer not later than Monday, July 11, 2005 about the issues and matters to be discussed at that conference. *Id.* Trial of the case is scheduled for November 7, 2005 before Chief Judge Mark E. Fuller. *Id.*

3.

At 12:00 p.m. on Friday, July 8, 2005, the Pensacola Division of the United States Attorney's Office for the Northern District of Florida was closed for evacuation due to Hurricane Dennis. Hurricane Dennis made landfall in Santa Rosa County, Florida on Sunday, July 10, 2005. The office did not re-open until 8:00 a.m. on Wednesday, July 13, 2005. As a result, the undersigned Assistant United States Attorney was unable to confer with Counsel for Defendant concerning the issues and matters to be discussed at the Initial Pretrial Conference.

4.

All pretrial motions under Fed.R.Crim.P. 12(b) and (d), 14 and 16, all notices under Fed.R.Crim.P. 12.1, 12.2, and 12.3, and all motions to compel pursuant to this Court's standing order on discovery were required to be filed not later than July 9, 2005. *Id.* Due to evacuation and closure of the United States Attorney's Office, the undersigned Assistant United States Attorney did not receive the following defense motions until the reopening of the office today (July 13, 2005): First Motion to Dismiss of Defendant (Doc. 27) filed out of time on July 11, 2005 and entered at 6:14 p.m. on July 11, 2005; Memorandum in Support of the Defendant's Motion to Dismiss (Doc. 28) filed out of time on July 11, 2005 and entered at 6:15 p.m. on July 11, 2005; Motion to Compel Subpoena Responses (Doc. 29) timely filed on July 7, 2005 and entered at 9:54 a.m. on July 7, 2005. Therefore, the Government has not had opportunity to review nor to respond to the defense motions which would be the subject of the Initial Pretrial Conference.

5.

The undersigned Assistant United States Attorney returned from evacuation on Tuesday,

July 12, 2005. During the approximately 200 mile drive from the point of evacuation, the availability of gasoline to fuel vehicles was extremely limited on both State roads and on the interstate highway.

6.

The undersigned Assistant United States Attorney is a resident of Gulf Breeze (Santa Rosa County), Florida, in an area known as "Midway" (between Pensacola Beach and Navarre Beach and near to where the "eye" of Hurricane Dennis made landfall). As of the filing of this motion, power has not been restored to this area. In addition, the availability of gasoline remains limited in the local area, and is expected to be limited between Gulf Breeze/Pensacola, Florida and Montgomery, Alabama.

7.

Counsel for Defendant was consulted about the filing of this motion. The defense does not object to a continuance of the Initial Pretrial Conference. Counsel for Defendant is scheduled to be out of the country from Sunday, July 30, 2005 through approximately Monday, August 8, 2005.

8.

The undersigned Assistant United States Attorney has known scheduling conflicts for the following dates: Monday, July 18, 2005 through Wednesday, July 20, 2005; Tuesday, July 27, 2005 through Wednesday, July 28, 2005.

Argument

Broad discretion is granted this Court on matters of continuance. *Morris v. Slappy*, 461 U.S. 1 (1983); *United States v. Vasser*, 916 F.2d 624, 627 (11th Cir. 1990)(Eleventh Circuit

reviews a court's decision to grant or deny a continuance under the Speedy Trial Act for abuse of discretion). This Court's findings of fact relating to the Speedy Trial Act are entitled to substantial deference, and will be reversed only for clear error. 18 U.S.C. § 3161 *et. seq.*; *United States v. Taylor*, 487 U.S. 326 (1988).

Under the circumstances, two bases for continuance enumerated in 18 U.S.C. § 3161(H)(8)(b) are appropriate. First, failure to grant a delay would make continuation of the Initial Pretrial Conference impossible or could result in a miscarriage of justice: it would pose a genuine hardship for the Government's counsel to travel to Montgomery, Alabama, and the Government cannot be adequately prepared to respond to defense motions filed on or after July 8, 2005 given receipt of those motions the day before the hearing. 18 U.S.C. § 3161(h)(8)(B)(i). Similarly, failure to allow a delay in the Initial Pretrial Conference would deny the Government's attorney reasonable time for effective preparation, taking into account the exercise of due diligence. 18 U.S.C. § 3161(h)(8)(B)(iv).

Requested Relief

WHEREFORE, in the interest of justice, the United States requests that the Court continue the Pretrial Conference from the scheduled July 14, 2005 hearing date.

The United States further requests that this Court set forth on the record its reasons for finding that the ends of justice served by the granting of the continuance outweigh the interest of the public in a speedy trial (the defendant having waived speedy trial). 18 U.S.C. § 3161(8)(A).

RESPECTFULLY SUBMITTED this 13th day of July, 2005.

GREGORY R. MILLER
United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing GOVERNMENT'S UNOPPOSED MOTION FOR CONTINUANCE OF INITIAL PRETRIAL CONFERENCE upon the defendant by electronic filing with and noticing by the Clerk of Court, and by mailing an additional courtesy copy of same to the defendant's counsel of record: Julian L. McPhillips, Jr., McPHILLIPS SHINBAUM LLP, Post Office Box 64, Montgomery, Alabama 36101.

THIS 13th day of July, 2005.

/s/Dixie A. Morrow
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